

Feedback form

Consultation: Proposed exemptions for foreign listed issuers from climate reporting duties

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Proposed exemptions for foreign listed issuers from climate reporting duties: [your organisation's name]' in the subject line. Thank you. **Submissions close on 17 April 2023.**

Date: April; 18th 2023

Number of pages:

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Company or entity: NZ Shareholders Association

Organisation type: Membership organisation

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| Question number | Response |
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| <p>Question 2 <i>Do you think we should grant the proposed class exemptions to NZX FEI's in respect of their new climate reporting duties under Part 7A of the FMC Act? Please explain the reasons for your view.</i></p> | <p>NZSA supports the class exemptions as outlined in the consultation document, based on the country's home jurisdiction.</p> <p>The consultation paper states there are 16 such issuers.</p> <p>However, we believe this figure excludes some NZ-registered issuers that maintain a primary listing on the ASX, and are also quoted on the NZX as a foreign-exempt issuer.</p> <p>In this context, we believe any class exemption should only apply if the company is not a NZ-registered or incorporated company.</p> <p>The alternative is to potentially disadvantage NZ capital markets as NZ-incorporated companies take advantage of 'compliance arbitrage' between the NZ and Australian regulatory environment in considering their listing options.</p> <p>Currently, two issuers (NZO and TSK) are incorporated in New Zealand while maintaining a primary listing on the ASX. NZSA do not believe it is the intent of the CRD regime for these companies to be exempt from CRD requirements.</p> |
| <p>Question 3 <i>Do you agree with our proposed option and its design? Are there any other options (such as as granting exemptions to all NZX FEI's) or changes to the proposed option that we should be considering? If so, please provide details.</i></p> | <p>NZSA broadly supports the proposed exemption options (full or partial) as stated by the FMA in its consultation paper.</p> <p>This is a pragmatic response that recognises appropriate 'lag' as other jurisdictions introduce their own climate-related disclosure regimes and limits scope to the FEI's business operations in NZ.</p> <p>We note that the XRB has intended to align with both TCFD and the ISSB regimes, with the ISSB standard likely to be finalised during Calendar 2023.</p> <p>In this context, NZSA believes the proposed exemption timeline should be reduced from five years to three years, with a review based on the climate-related disclosure requirements of the issuer's country of incorporation as compared with New Zealand's CRD regime undertaken at the end of the exemption period.</p> |
| <p>Question 4 <i>Do you think that the proposed options will promote the purposes of the FMC Act? Please provide reasons for your answer.</i></p> | <p>Yes, subject to our commentary provided in questions 2 and 3.</p> <p>NZSA notes the aims of the FMC Act to "<i>facilitate the development of fair, efficient and transparent financial markets</i>" and to "<i>provide for timely, accurate and understandable information</i>". NZSA</p> |

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| | believes this enables a weighting towards disclosure; however, this should be balanced with the need to promote “ <i>informed participation of businesses</i> ”. |
| <p>Question 5 <i>In your view, what are the consequences, costs and benefits, and pros and cons of the options, including our proposed option?</i></p> | <p>NZSA believes that over the three year period, all of the international jurisdictions linked to the FEI regime in New Zealand are likely to align or exceed NZ jurisdictional requirements in relation to climate-related disclosures, including the development of three alternative global-warming scenarios and the measurement and disclosure of Scope 3 emissions.</p> <p>While issuers undoubtedly incur compliance costs in their CRD disclosures, the manner in which the XRB has designed the regime is unlikely to result in any significant long-term incremental cost in complying with the NZ regime as compared with emerging regimes in other jurisdictions.</p> <p>Therefore, NZSA does not believe there is any long-term cost/benefit argument applicable to FEI’s.</p> <p>NZSA supports a transitional exemption regime as a means of preserving the long-term intent of the CRD regime while discouraging short-term decisions based on listing costs by current or potential FEI’s.</p> |
| <p>Question 7 <i>What are the risks and opportunities for how the FMA deals with NZX FEIs in respect of their new climate reporting duties? In particular:</i></p> <ul style="list-style-type: none"> <i>If you are an NZX FEI and we did not grant any exemption, would you consider delisting from the NZX?</i> <i>If we did not grant any exemption, would secondary listings on the NZX be discouraged?</i> | <p>NZSA believes that if no transitional exemptions were offered by the FMA, that this would act as a form of discouragement for potential FEI’s to be listed on the NZX, as the benefit of being listed in NZ is outweighed by the requirement to apply NZ’s CRD regime to their entire global business.</p> <p>The proposed FMA exemption or partial exemption to limit disclosure only to their NZ business operations is a pragmatic response that preserves the competitiveness of NZ’s capital markets while underscoring the intent to disclose the impact of climate change in a New Zealand context.</p> |
| <p>Question 8 <i>Are there any potential problems or unintended consequences that may arise from granting the proposed exemptions? For example, will it impact on New Zealand fund managers’ or New Zealand banks’ own reporting obligations?</i></p> | <p>NZSA believes that the exemption should only apply to companies not incorporated in New Zealand, otherwise this heightens the unintended consequence of promoting the ASX as a primary listed environment for NZ issuers.</p> |
| <p>Question 9 <i>Are the proposed conditions for our proposed option appropriate? How should we verify that NZX FEIs are under the proposed thresholds? Where do you think exempt NZX FEIs should be required to include the statement that they are not complying with the New Zealand CRD disclosures? Should there be any additional conditions? If so, please provide details.</i></p> | <p>In terms of ‘threshold level’, please see question 10.</p> <p>NZSA would prefer to see a “total assets” test, with FMA verification drawn from an organisation’s statutory accounts.</p> <p>Disclosure of where issuers are not complying with CRD under an exemption provided by the FMA should be contained as a note within the FEI’s annual report – this is relied on by all investors (including New Zealand), regardless of their geography.</p> |
| <p>Question 10 <i>Do you think our proposal for a total exemption for NZX FEIs with NZ assets under \$1 billion and annual revenue under \$250 million has appropriate thresholds? If not, please let us know your views on suitable thresholds.</i></p> | <p>NZSA would prefer to see a more aligned threshold of “total assets” for an FEI’s NZ-based business with the existing CRD regime (\$60m). However, we believe that this is a high threshold.</p> <p>We would prefer to see the existing CRD regime (and the thresholds in this proposed exemption) change to a total assets test of between \$250m-\$300m. This would provide consistency for issuers and investors, whether considering both a local primary listing or FEI.</p> |
| <p>Question 11 <i>Do you think a 5-year term is appropriate for the proposed exemption relief? If not, please let us know your views on a suitable term.</i></p> | <p><i>Please note NZSA’s response in question 3, repeated below:</i></p> <p>We note that the XRB has intended to align with both TCFD and the ISSB regimes, with the ISSB standard likely to be finalised during Calendar 2023.</p> |

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| | <p>In this context, NZSA believes the proposed exemption timeline should be reduced from five years to three years, with a review based on the climate-related disclosure requirements of the issuer's country of incorporation as compared with New Zealand's CRD regime undertaken at the end of the exemption period.</p> |
| <p>Question 12 <i>Do you think the proposed exemption should apply to an NZX FEI even if it is incorporated in, or headquartered in, New Zealand if the majority of its revenues are from overseas-based operations or assets? Please provide reasons for your answer. If this approach is adopted for New Zealand incorporated or headquartered entities, what threshold should be set for the percentage of annual overseas-based revenues needed to qualify for NZX FEI exemption relief?</i></p> | <p>No - the exemption to CRD should not apply to companies incorporated in New Zealand, regardless of their listing status. Please see the NZSA response to Questions 2 and 8 above</p> |
| <p>Feedback summary – <i>if you wish to highlight anything in particular</i></p> | |
| <p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p> | |
| <p>Thank you for your feedback – we appreciate your time and input.</p> | |